
VI. Regional Negotiations

Free Trade Area of the Americas (FTAA)

At the December 1994 Summit of the Americas, convened by President Clinton in Miami, the 34 democratically-elected leaders in the Western Hemisphere committed to conclude negotiation of the Free Trade Area of the Americas (FTAA) by no later than the year 2005, with concrete progress toward that objective by the end of the century. The Miami Summit "Plan of Action" for the FTAA led to three Trade Ministerial meetings (the first one hosted by the United States in Denver) where Ministers established fundamental principles to guide the FTAA process and created twelve Working Groups.

The function of the Working Groups -- which cover market access; customs procedures and rules of origin; investment; standards and technical barriers to trade; sanitary and phytosanitary measures; subsidies, antidumping and countervailing duties; smaller economies; government procurement; intellectual property rights; services; competition policy; and dispute settlement -- was to construct the foundation and begin the preparations for negotiation of the FTAA. The Working Groups have met numerous times from the date of their establishment through early 1998 in order to meet their mandates and to prepare recommendations for the Vice Ministers' review and decision of the Ministers at their annual meetings.

The United States participated actively in preparations for the Belo Horizonte (Brazil) Trade Ministerial in May 1997. A well-defined work program was established for the 12

Working Groups. They have made significant progress by developing databases and inventories detailing information on each country's legislation and international obligations in each substantive area. To improve transparency and facilitate business in the hemisphere, the participating governments agreed to make this information available to the private sector by publishing the inventories and making them available on the official FTAA Internet homepage (www.ftaa-alca.org). The Working Groups also reviewed recommendations from the Americas Business Forum held in Belo Horizonte at which the private sector provided its views on the substantive areas covered by the Working Groups. The Ministers at their meeting in Belo Horizonte noted the importance for their deliberations of inputs from affected segments of society, including the labor sector.

In addition, the Ministerial mandated that a Preparatory Committee composed of the Hemisphere's Vice Ministers of Trade prepare recommendations on the structure, approaches, and objectives of the FTAA. The Ministers agreed to recommend that their leaders initiate the FTAA negotiations at the Summit of the Americas meeting in April 1998 in Santiago, Chile. The Ministers will agree on a negotiating structure at their fourth meeting, to be held in San Jose, Costa Rica, in March 1998; the agreed structure will then be forwarded to the Santiago Summit for approval by the leaders.

North American Free Trade Area (NAFTA)

The North American Free Trade Agreement (NAFTA), which built on the 1989 U.S.-Canada

Free Trade Agreement (CFTA), is the most comprehensive and largest regional free trade agreement in the world, with nearly 400 million people producing over \$8 trillion dollars worth of goods and services. Since the Agreement's entry into force on January 1, 1994, the Administration has worked to ensure that its provisions are implemented conscientiously in order to eliminate remaining barriers to U.S. exports. Cooperative agreements on labor and the environment are also part of the NAFTA. (Bilateral issues are discussed in the separate sections on Canada and Mexico).

Upon the Agreement's entry into force, half of all U.S. exports to Mexico became eligible for duty-free treatment. This benefits many sectors in which the U.S. private sector is most competitive, such as semiconductors, computers, machine tools, aerospace equipment, and medical devices. Remaining tariffs are scheduled for elimination on a five, ten, or fifteen year schedule. January 1, 1998, marked the fifth round of reciprocal tariff reductions; the average Mexican tariff on U.S. products has fallen from 10.0 to 2.9 percent, while the average U.S. tariff on Mexican products has fallen from 4.0 to 0.8 percent. Thus, U.S. firms have obtained more than a seven percentage point margin of preference compared to non-NAFTA competitors, while Mexican firms have obtained roughly a three percentage point margin of preference in the United States. Over the same time, Mexico has increased tariffs on many items for non-NAFTA countries, thus increasing the margin of preference for U.S. firms.

Trade among the three NAFTA Parties has boomed during the first four years of the Agreement. U.S. goods exports to our NAFTA partners rose over 56 percent, or about \$80 billion (to \$222 billion) in 1997 (based on data for the first 11 months). U.S. merchandise exports to Canada, our largest trading partner, climbed over 50 percent since the NAFTA entered into force. Despite the temporary peso-related decline in goods exports to Mexico in 1995, U.S. merchandise exports to Mexico, our second largest export market, rose by roughly 72 percent above pre-NAFTA levels. These are

record-setting levels of U.S. exports to both countries.

Elements of NAFTA

Removing Non-Tariff Barriers

The NAFTA went beyond tariffs and quotas by reducing or eliminating numerous non-tariff barriers, such as import licensing and performance requirements. These were more prevalent in Mexico than in Canada. For example, the Agreement eliminated rules forcing U.S. manufacturing investors in Mexico to export their output -- usually to the United States -- rather than sell it in the Mexican market. Requirements that U.S. companies produce in Mexico in order to sell there are being phased out. These barriers have been especially hard on small U.S. businesses, which are often ill-equipped to wrestle with complex procedures and unable to invest in overseas manufacturing facilities.

Government Procurement

The NAFTA defines broad categories of government procurement contracts on which firms from the three Parties can bid, including many services, such as construction services. The Agreement provides for transparent tendering and bid protest procedures, establishes a bid challenge mechanism, and prohibits offsets, without restricting U.S. small and minority business programs.

Intellectual Property Rights (IPR)

The NAFTA contains specific obligations requiring high levels of protection to owners of patents, copyrights, trademarks, trade secrets, and integrated circuit designs. Such protection will increase trade while decreasing losses from piracy and counterfeiting. Products that particularly benefit from the NAFTA's IPR

chapter are computer software, motion pictures, audio recordings, pharmaceuticals, agricultural chemicals, and computer chips.

Investment

The NAFTA provides comprehensive disciplines to ensure foreign investors are treated like all other investors. Unlike the CFTA, the NAFTA also provides investors with the opportunity to directly enforce their rights (and receive compensation) through international arbitration. The NAFTA includes disciplines on performance requirements which prohibit most requirements for local content, for the transfer of technology to competitors, and for exclusive suppliers of a particular product to a specific region or market.

Rules of Origin

The NAFTA raised the North American content requirement for duty-free treatment of automobiles from 50 percent, as was the case in the CFTA, to 62.5 percent, and introduced mechanisms to improve enforceability. The NAFTA also contains special rules of origin for high technology products, textiles, and apparel.

Safeguards

The NAFTA provides methods for protecting American industries and workers from injury -- or threat of injury -- from surges in imports through two safeguard provisions. A bilateral safeguard permits a temporary "snap-back" to applied MFN tariff rates, and a global safeguard maintains our right to impose measures on Canada and Mexico as part of a multilateral action when imports from either country seriously injure U.S. firms.

Services

The NAFTA strengthens rules and broadens coverage to all service providers except those specifically excluded. The Agreement opens new market opportunities for U.S. service companies by allowing them to provide services directly from the United States on a non-discriminatory

basis. It encourages elimination of citizenship requirements for licensing and certification of professionals. In financial services, the NAFTA provides for significant, phased openings of the Mexican banking and insurance markets, as well as for party-to-party and investor-to-party dispute settlement mechanisms.

Standards

The NAFTA ensures that Canadian and Mexican product standards, regulations and conformity assessment procedures do not discriminate against U.S. exports or create needless barriers to trade. The Agreement preserves our right to establish and enforce our own product standards and regulations, particularly those designed to promote safety and protect human, animal and plant life and health and the environment. In 1997, the trilateral NAFTA Committee on Standards-Related Measures addressed issues such as new product labeling regulations and revised certification procedures implemented by the Mexican Government as well as Mexico's January 1, 1998 obligation to recognize U.S. and Canadian certification bodies on a national treatment basis..

The Telecommunications Standards Subcommittee (TSSC), made up of telecommunications trade and regulatory officials from the three NAFTA signatory countries, regularly meets to discuss, monitor, and facilitate the implementation of the telecommunications-related provisions of the NAFTA. Work has focussed on implementing the TSSC's detailed, multi-year work program on standards harmonization, particularly with respect to standards for terminal attachment, and on procedures to accept data relating to telecommunication equipment from test centers and laboratories located in the territories of the other parties.

Although implementation of the NAFTA cross-border bus and trucking provisions has been delayed, the NAFTA Land Transportation Standards Subcommittee has made progress on safety issues. Talks continue on other land

transportation issues, such as small package delivery and 53-foot trailers.

Review of Dumping and Subsidy Determinations

Under NAFTA Chapter 19, the United States was not required to make any substantive change in its antidumping (AD) or countervailing duty (CVD) laws. The NAFTA does require Mexico to undertake far-reaching reforms to provide full due process guarantees and effective judicial review to U.S. exporters. NAFTA establishes a mechanism for independent binational panels to review final U.S., Canadian, and Mexican AD and CVD determinations when such review is requested by a person entitled to judicial review of the determination under the domestic law of the importing country. This is essentially the same review system that the United States and Canada have applied under the CFTA. In the four years that the NAFTA has been in force, 35 Chapter 19 panels have completed their work or have cases pending.

The NAFTA also incorporates the CFTA's "extraordinary challenge" procedure to deal with concerns that certain actions may have affected a panel's decision and threaten the integrity of the review process. In addition, the NAFTA creates a mechanism designed to address cases in which application of a country's domestic law undermines the panel process.

Mechanisms to Implement the Agreement

The NAFTA's central oversight body is the NAFTA Commission, chaired jointly by the U.S. Trade Representative, the Canadian Minister for International Trade, and the Mexican Secretary of Commerce and Industrial Development. The NAFTA Commission, modeled after the U.S.-Canada Trade Commission under the CFTA, is responsible for overseeing implementation and elaboration of the NAFTA and for dispute settlement. The Commission has established working groups and advisory bodies to facilitate the NAFTA's implementation and to examine unresolved issues. In addition to the work

program of the trilateral Committees and Working Groups, and their sub committees and sub groups, a trilateral NAFTA Coordinators process reviews on an ongoing basis developments in the work program and coordinates trilateral decisionmaking by the Commission on topics of particular interest. For example, the NAFTA Coordinators develop the agenda for the annual NAFTA Commission meetings required under the NAFTA. The NAFTA Commission last met on March 20, 1997, in Washington, D.C.

NAFTA and Labor

The North American Agreement on Labor Cooperation (NAALC), a supplemental agreement to the NAFTA, covers issues of special concern to working people in the three countries. The NAALC promotes effective enforcement of domestic labor laws and fosters transparency in their administration. The NAALC also has generated an unprecedented trilateral work program in the areas of industrial relations (i.e., the right to organize and bargain collectively), occupational safety and health, employment and training and child labor and gender initiatives.

Each NAFTA Party has also established a National Administrative Office (NAO) within its Labor Department, or the equivalent agency, to provide a contact point for information, to examine labor concerns, and to coordinate the expansive cooperative work programs. Under the Labor Agreement, citizens of any NAFTA signatory can request their government to review labor practices in one of its NAFTA partners. So far, the U.S. NAO has received nine submissions and three cases are still pending: one regarding pregnancy tests, and two regarding the right to unionize -- all three in Mexico. In addition, the Agreement created a trinational NAFTA Labor Secretariat, located in Dallas, Texas, and currently headed by a Canadian Executive Director.

NAFTA and the Environment

A further supplemental accord, the North American Agreement on Environmental Cooperation (NAAEC), ensures that trade liberalization does not come at the expense of environmental protection. The NAAEC created the North American Commission on Environmental Cooperation (CEC) comprising the top environmental official from the United States, Canada, and Mexico. The Commission's work is supported by an Environmental Secretariat located in Montreal.

In the first three years of operation, the CEC has begun work on an impressive list of environmental projects focusing on five major themes: environmental conservation; protecting human health; enforcement cooperation and law; environment, trade, and economy; and information and public outreach. Other recent developments include the establishment of the North American Fund for Environmental Cooperation (NAFEC), a C\$2 million (approx. \$1.4 million in U.S. dollars) fund for community based grants to help meet the goals of the NAAEC.

The Border Environment Cooperation Commission (BECC), an institution created by the NAFTA and focused on the improvement of the U.S.-Mexico border environment, has certified twelve projects in its first two years, six projects in each country. The North American Development Bank (NADBank) has approved financing for four of the projects and is currently reviewing other BECC-certified projects. In addition, the bank has authorized technical assistance of more than \$ 2.2 million that benefits 34 border communities in upgrading their local utilities. The BECC has been awarded a \$10 million grant by the EPA to identify and develop water-related infrastructure projects in both countries. In addition, the Border XXI Program emphasizes public involvement, decentralization of environmental decision-making through state and local capacity building, and improved communication and cooperation among federal, state, and local governments.

Dispute Resolution for Labor and Environment

The Labor and Environment agreements also provide for dispute settlement in the event of a persistent pattern of failure to effectively enforce national laws. Where consultations fail to resolve such disputes, a neutral panel of independent experts will be established by two-thirds vote of the parties. Ultimately, if a panel finds that there was such a persistent pattern, and if a party fails to remedy the matter, then there could be fines or trade sanctions. Canada has agreed, in lieu of trade sanctions, to make assessments and other panel-ordered remedies enforceable against Canada in Canadian courts.

Asia Pacific Economic Cooperation

Background: APEC from 1993-1996

The Asia Pacific Economic Cooperation (APEC) forum continued its evolution in 1997 as the leading regional forum for advancing economic cooperation and trade and investment liberalization and facilitation. APEC, which consists of 18 economies on both sides of the Pacific, accounts for over half of world trade, and a growing proportion of world trade and output.

APEC's development as the preeminent economic grouping in the Asia-Pacific region began in 1993, when President Clinton invited the 18 APEC Leaders to Blake Island, Washington for the first ever APEC Economic Leaders Meeting. This helped sharpen APEC's focus, leading to 1994's "Bogor Declaration" in Indonesia, at which Leaders agreed to the goal of "free and open trade and investment" in the region, by 2010 for industrialized economies, and 2020 for developing members. Further progress was made in 1995, with completion of the "Osaka Action Agenda," which established a plan for meeting the Bogor goal in 14 substantive trade and trade-related areas: tariffs, non-tariff measures,

services, investment, standards and conformance, customs procedures, intellectual property rights, competition policy, deregulation, government procurement, rules of origin, dispute mediation, mobility of business people, and implementation of Uruguay Round outcomes.

In 1996, two significant developments occurred at the APEC Leaders meeting in the Philippines. First, the 18 APEC members provided their first specific plans for implementing APEC objectives in the 14 substantive areas of the Osaka Action Agenda by completing the first version of their "Individual Action Plans (IAPs). The IAPs are subject to annual revision and review. Second, APEC Leaders strong endorsement of the Information Technology Agreement (ITA) in November 1996 acted as the catalyst for the subsequent completion of a binding global agreement in the WTO, one of the world's most commercially significant trade agreements.

Progress in 1997

APEC continued to make significant strides in 1997 in the trade and investment area. Three areas in particular are worth noting: (1) the early voluntary sectoral liberalization initiative; (2) progress in updating and improving IAPs; (3) other important trade and investment liberalization and facilitation measures.

Early Voluntary Sectoral Liberalization

In their 1996 Subic Bay Declaration, in addition to calling for conclusion of the ITA, APEC Leaders directed Ministers to identify other sectors where "early voluntary liberalization would have a positive impact on trade, investment and economic growth in the individual APEC economies as well as the region." In May 1997, APEC Trade Ministers in Montreal affirmed that APEC should continue to act as a catalyst to promote the global opening or markets, as it had with the ITA. They therefore directed officials to conduct an intensive process for selecting such sectors, for review and final action by the time of the APEC Ministers and Leaders meetings in November 1997. In

selecting such sectors, Ministers instructed officials to have regard for three factors: the possibility of encompassing both tariff and non-tariff issues, as well as elements of facilitation and economic and technical cooperation; ensuring the fullest possible private sector input and support; and, consideration of "critical mass" by developing initiatives supported by significant groups of APEC members, and where appropriate for incorporation to the WTO.

In November, APEC Ministers received information on over 40 potential sectors that had been proposed and reviewed by officials. From this list, they recommended 15 to APEC Leaders for a program of early liberalization. APEC Leaders endorsed the Ministers' recommendation.

Of the fifteen selected sectors, Ministers identified nine for early action in 1998:

- Environmental goods & services
- Chemicals
- Energy sector
- Medical Equipment
- Forest Products
- Fish & fish products
- Toys
- Gems & Jewelry
- Telecom MRA

In these nine sectors, it was agreed that detailed proposals defining parameters such as scope of product coverage, phasing of liberalization, and measures covered (i.e., tariffs and/or other measures) would be completed by the APEC trade ministers meeting in June 1998, with a view toward beginning implementation in 1999, where appropriate in the WTO.

In addition, Ministers directed that work to develop proposals proceed in six additional sectors:

- oilseeds
- food sector
- automotive sector
- civil aircraft
- fertilizer
- natural & synthetic rubber

In these sectors, officials were directed to further develop proposals for review and assessment by Ministers at the June Trade Ministers meeting, for possible recommendation to Leaders in November 1998.

In accordance with this guidance, APEC officials will work intensively in 1998 to complete plans for early liberalization in the identified sectors. APEC Officials meetings are currently scheduled for February, June, September and November 1998 in Malaysia.

Updating and Improving Individual Action Plans (IAPs)

In 1996, each of the 18 APEC members developed detailed Individual Action Plans indicating how they would meet the Osaka Action Agenda objectives in the 14 substantive areas. In other words, the IAPs are a key tool for indicating how APEC economies are progressing toward the goal of “free and open trade and investment” in specific terms. APEC members are obligated to continuously update their IAPs. Accordingly, in 1997 all APEC members submitted revised IAPs. These revised IAPs demonstrate that APEC members continue to take measures to further open their economies.

APEC economies also took steps in 1997 to improve the IAP process. First, progress was made in the process of reviewing IAPs. APEC members conducted both bilateral reviews of each others IAPs, as well as “plurilateral peer reviews,” where a number of economies invited all interested members to critique their IAP in a group meeting. Second, the Committee on Trade and Investment revised the reporting guidelines for IAPs in 1997, in order to improve the detail and transparency of measures specified in the plans. A key remaining U.S. objective is to improve the process for reviewing and assessing IAP “comparability,” i.e., assuring that all APEC economies are progressing toward Bogor goals in a comparable manner.

Trade and Investment Facilitation

Measures

Another key element of the 1995 Osaka Action Agenda was the development of guidelines for “collective action plans” in each of the 14 substantive areas. In 1996, such specific collective action plans were developed. In 1997, implementation of the collective action plans began, and many of the plans were enlarged. A chief aim of these collective action plans in a number of the substantive areas is the development of cooperative approaches to facilitating trade and investment among APEC members. The full results of these efforts are reported in the *1997 Committee on Trade and Investment Annual Report to Ministers*. Highlights of the 1997 Report include:

- Completion of a comprehensive APEC Blueprint for Customs Modernization, detailing a plan for improving customs systems throughout the region;
- Completion of APEC guidelines for the preparation, adoption, and review of technical regulations, to help ensure that such regulations are more transparent and not used as disguised barriers to trade;
- Adoption of principles of transparency in government procurement, which was provided to the WTO to further work on a multilateral agreement in that forum;
- Adoption of principles to guide future work on dispute mediation;
- Completion of an APEC tariff database, which is available on the Internet;
- Concrete progress on alignment of national standards with international standards.

These measures are just a small sample of collective actions underway in APEC under the auspices of the CTI, the aim of which is to lower costs and facilitate the flow of goods and services within the Asia Pacific region. Further progress in such facilitation areas is expected for 1998.

